

NOT FOR PUBLICATION

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

FILED

DEC 12 2005

BENJAMIN ZAGUILAN LARA,

Petitioner,

V.

ALBERTO R. GONZALES, Attorney
General,

Respondent.

No. 04-74541

Agency No. A77-814-712

MEMORANDUM^{*}

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

On Petition for Review of an Order of the
Board of Immigration Appeals

Submitted December 5, 2005^{**}

Before: GOODWIN, W. FLETCHER, and FISHER, Circuit Judges.

Benjamin Zaguilan Lara, a native and citizen of Mexico, petitions for review of the Board of Immigration Appeals' ("BIA") order dismissing his appeal from an

^{*} This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

^{**} This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

immigration judge's ("IJ") order denying cancellation of removal. We dismiss the petition for review.

The IJ concluded that Zaguilan Lara failed to qualify for cancellation of removal, in part because he did not show good moral character. *See* 8 U.S.C. § 1229b(b)(1). Zaguilan Lara did not challenge this component of the IJ's decision before the BIA, or before this court. We lack jurisdiction to review the moral character determination, both because Zaguilan Lara failed to exhaust his administrative remedies and because it is a discretionary determination. *See Barron v. Ashcroft*, 358 F.3d 674, 678 (9th Cir. 2004) (holding that exhaustion is mandatory and jurisdictional); *Moran v. Ashcroft*, 395 F.3d 1089, 1091 (9th Cir. 2005) (recognizing that the court lacks jurisdiction to review discretionary determinations of moral character).

Because the agency's moral character finding is dispositive, we do not consider his challenge to the agency's physical presence finding.

The voluntary departure period was stayed, and that stay will expire upon issuance of the mandate. *See Desta v. Ashcroft*, 365 F.3d 741, 750 (9th Cir. 2004).

PETITION FOR REVIEW DISMISSED.